Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

F.A.F.O. No.152 of 2001

Kanhaiya Singh S/o Beer Singh Rana... Claimant/Appellant.

Versus

(1) Papendra Singh S/o Hukum Singh,
(2) Gopal Singh S/o Shyam Singh,
(3) The Oriental insurance Company

...Opp.parties/Respondents.

Hon'ble P.C.Verma, J.
Hon,ble B.S.Verma, J.

Heard Sri Rajendra Dobhal, learned counsel for the appellant, Sri Pankaj Purohit, learned counsel for the respondent No.2 and Sri Prabhat Pandey, learned counsel for the respondent No.3-Orietnal Insurance Company Ltd.

Admit the appeal for hearing.

This appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 for enhancement of the award made by the Motor accident Claims Tribunal/District Judge, Chamoli, dated 11.10.2000 in Motor Accident Claim Case No.12 of 1999. The claimant was a conductor in the Bus belonging to Garhwal Motor Owners Union Ltd. And was getting salary and due to the injuries in an accident occurred on 30.04.1998, at 12A.M. due to rash and negligent driving of the Jeep No. UP 07-1029 owned by Gopal Singh- Opp.party No.2, he remained in the Hospital at Karnprayag in the month of April and May and at Dehradun from 30th October to 18th November, 1998. The claimant suffered fracture, which caused permanent disability in the hand and leg. On the pleadings of

the parties, the issues were framed by the Tribunal. The trial court found that disability was only 12% for the reason that the X-rays and medical reports were not proved by the doctor, as the doctor who treated the claimant-appellant was not examined by him. Therefore, on this issue i.e. issue No.3 the finding of the Tribunal does not call for any interference. The issue No.3 was regarding the expenditure incurred by the claimant on his treatment. The appellant had filed cash memos of purchase of medicines and X-rays fees worth Rs.12,650/- as is evident from paper Nos. 32-C to 55-C. The claimant has also filed cash-memos paper Nos. 62-C/1, 62-C/2 and 62-C/4 showing the purchase of medicines worth Rs. 3,782/- and paper No.62-C/3 is bill for Rs. 3,000/- as doctor's fee. These papers have been ignored simply that the doctor, who medical treated the injured, was not examined in the witness box. Therefore, the Tribunal did not grant any compensation towards disability. Admittedly, paper No.66-Kha issued by the Chief Medical Officer, Chamoli was brought on record by the appellant, which shows that the petitioner appellant is permanently disabled of 12%. The Tribunal did not deal with this document which was issued by the Chief Medical Officer and was not denied by the Insurance Company. Therefore, we hold that that petitioner-appellant had suffered 12% permanent disability for which no compensation has been paid. Accordingly, we have to work out the compensation for permanent disability of 12% as per formula given in Section 4 of the Workman Compensation act in view of the provision of sec. 160-A read with schedule I of the Motor Vehicle Act. The petitioner was 26 years of age at the time of accident. Learned counsel for the parties calculated the amount as per formula given and agreed that the petitioner-claimant was entitled to be paid the compensation amounting

to Rs. 30,999/-. Therefore, the amount of award is enhanced from Rs. 17,432/- to Rs. 30999-.

The appeal is allowed. The amount of compensation is enhanced from Rs. 17,432/- to Rs. 30,999- against the Opp. Party No.3-Oriental Insurance Company Ltd. Alongwith interest at the rate fixed by the Tribunal from the date of petition till the date of final payment. The impugned order dated 11.10.2000 is modified accordingly. No order as to costs.

(B.S. Verma, J.) **(P.C.Verma, J.)**

06.08.2004

P.Singh